

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mike Knell, dba JTR Publishing,

Complainant,

vs.

Pacific Bell Telephone Company and AT&T
Communications of California, Inc.,

Defendants.

Case 01-07-034
(Filed July 25, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTION TO
FILE AMENDMENT TO COMPLAINT, DENYING MOTION TO DISMISS,
AND AMENDING SCOPING MEMO**

This ruling grants Complainant's motion to file amendment to complaint (motion) to incorporate in this proceeding issues that are related to the issues already raised in the complaint. Pacific Bell Telephone Company's (Pacific) motion to dismiss is denied without prejudice, because granting the amendment renders that motion moot. The scoping memo is amended to reflect the filing of the amendment, and the schedule is revised to include sufficient time for discovery and preparation of testimony.

Background

At the first prehearing conference (PHC), held on November 5, 2001, the parties agreed to attempt to informally resolve one issue regarding Complainant's directory listings, while the Commission's Telecommunications

Division investigated Complainant's service quality problems. The parties were unable to reach an informal agreement. At the second PHC, held on January 16, 2002, Complainant indicated he wanted to file an amendment that would narrow the issues in this proceeding.

Complainant filed the motion and attached amendment to complaint on January 29, 2002. Pacific and AT&T Communications of California (AT&T) filed responses on February 13, 2002. Complainant sought leave to file a reply to address the statutory deadline for resolving adjudicatory proceedings. The assigned administrative law judge granted leave to file a reply, and Complainant filed the reply on February 20, 2002.

Complainant raised four issues in the Complaint: Rule 11,¹ listings, service outages, and overbilling. Overbilling and Rule 11 were not included in the scoping memo, because discussions at the first PHC did not indicate there were unresolved overbilling and Rule 11 issues for the two business phone lines mentioned in the complaint. Complainant states that the scoping memo is incorrect, because it omits his additional lines. Complainant's amendment adds three phone lines; one is at a different address.

Defendants note that Complainant raises new issues and the additional phone numbers in the amendment. Pacific states that issues concerning one phone line have not been presented to Commission staff in the informal complaint process. Defendants state that they have limited their responses to Complainant's data requests and their internal investigations and preparation to the issues identified in the scoping memo; permitting the amendment will delay

¹ Complainant referred to Rule 11 violations generally. AT&T notes in its answer that its Rule 11 is unrelated to issues raised in this complaint.

the proceeding. Complainant states that he does not object to Pacific's and AT&T's request for more time if the amendment is permitted.

In the amendment, Complainant specifies issues concerning Rule 11 and overbilling. Complainant alleges that Pacific is "sabotaging" resale phone service. Although Complainant referred to sabotage of resale phone service in the context of a damages award in an unrelated court proceeding, Complainant did not allege that the issues referenced in the complaint resulted from such sabotage. Other new issues raised in the amendment concern differences in service due to location, discriminatory treatment, wrongful restrictions on long distance, unreasonable charges for listings, and violations of statutes with respect to written orders, access to toll-free numbers, and right of privacy.

Pacific filed a motion to dismiss the complaint on October 18, 2001, and alleged that the complaint was vague, failed to state a cause of action against Pacific, and was barred by the statute of limitations. In addition, Pacific alleged that it only provided resale service to Complainant for the business telephone numbers discussed in the complaint. Complainant responded on October 26, 2001 and asserted that he was a Pacific customer and that his complaint was not vague. Defendants note that the amendment further responds to the motion to dismiss.

Amendment

Although the amendment raises new issues and adds additional phone lines, most of those issues are related to the service quality and listings concerns discussed in the complaint, so I will permit the new issues to be added. For these related issues, amendment will be more efficient and a better use of Commission resources than requiring Complainant to file a new complaint. Where one issue (issue 2, overbilling for parts that were not installed) has not been brought to

Commission staff by informal complaint, directives from the Commission's Consumer Affairs Branch and Commissioner Duque to Complainant to raise that issue in a formal complaint are sufficient reason to permit the amendment rather than requiring Complainant to pursue an informal complaint. For other new issues, amendment must be considered individually.

Issues related to the complaint include those numbered 4, 5, 8, 9, 10, 11, 12, 14, 19, and 20 in the amendment. These issues all concern listings, service outages and overbilling, which are issues raised in the complaint. Amendment is permitted to include those related issues.

Complainant alleges that Pacific violated Rule 1 by including a declaration with its motion to dismiss that stated Complainant did not have a Pacific account (issue 1). Since Pacific corrected its declaration, this ruling denies the motion to dismiss, and amendment is permitted to include the overbilling issue concerning that phone line, the Rule 1 issue is moot and the request to add the issue to the complaint is denied.

Complainant alleges that Pacific has refused to repair his phone lines because he is a resale customer (issue 3) and is sabotaging resale service (issue 13). In part, Complainant raises these issues in response to Pacific's motion to dismiss. Because this ruling denies Pacific's motion to dismiss, amendment will not be permitted to address these issues. In addition, the Commission has ongoing proceedings that are addressing Pacific's provision of services to competitive carriers and will not expand the scope of this proceeding to address that issue.

Complainant alleges new discovery confirms differences in service quality between AT&T's broadband and Pacific's basic service and within Pacific's service territory (issues 6 and 7) in response to Pacific's motion to dismiss. Since Pacific's motion is denied, it is not necessary to address these issues in order to

proceed with Complainant's case. In addition, inquiring into these differences would expand the scope of the proceeding beyond allegations concerning Complainant's phone service. Although these issues will not be included in the scope of this proceeding, this ruling does not prohibit Complainant from introducing evidence concerning the differences between his broadband and resold services at the two addresses.

Complainant alleges that AT&T has provided prejudicial service and rules, including wrongful long distance restrictions (issues 15 and 16). Although these issues are new, they concern "Rule 11" and overbilling, issues that were raised in the complaint. Amendment is granted.

Complainant alleges that AT&T violated Pub. Util. Code §§ 2890(c) and 2891.1 (issues 17, 18, and 21).² Although the specific violations are new, they concern Complainant's listings and "Rule 11" issues. Amendment is granted.

Complainant alleges that AT&T violated Pub. Util. Code § 451 by unreasonably charging him for his listings.³ Although this issue is new, it concerns overbilling. Amendment is granted.

Motion to Dismiss

This ruling denies Pacific's motion to dismiss without prejudice. Granting the amendment to the complaint renders moot the motion to dismiss, as filed. Complainant has provided additional information on the allegations raised in the complaint and has included in the amendment a phone line for which Pacific is the retail service provider.

² Complainant refers to these sections of the Pub. Util. Code as rules.

³ Complainant similarly refers to this section as a rule.

Scoping Memo

The scoping memo is amended to include the Rule 11 and overbilling issues, to reflect the denial of Pacific's motion to dismiss, and to clarify the service quality and listings issues. Based on the complaint, answer and pleadings filed to date the following issues appear to be in dispute:

1. Whether the complaint and amendment state any cause of action against Pacific for telephone lines where Pacific no longer is Complainant's retail service provider.
2. Whether AT&T and/or Pacific have violated any Commission rule, regulation, or order in their handling of Complainant's service quality problems.
3. Whether Complainant's phone listings fail to conform to his terms of service with AT&T.
4. Whether AT&T and/or Pacific have violated any Commission rule, regulation or order in publishing Complainant's unlisted number.
5. Whether Complainant states a currently valid claim against AT&T and Pacific.
6. Whether AT&T and Pacific have followed applicable tariffs and Commission rules, regulations, and orders in restricting Complainants' contacts.
7. Whether AT&T and Pacific have overcharged Complainant and owe him refunds.

Schedule

AT&T and Pacific may file answers to the amendment to complaint by March 22, 2002, as permitted under Rule 87 of the Commission's Rules of Practice and Procedure. The amendment sufficiently broadens the allegations in

the complaint to warrant granting Defendants the opportunity to answer the amendment.

The proposed hearing schedule will not permit Defendants sufficient time to resolve outstanding discovery issues and prepare testimony. Complainant has no objection to extending the schedule. The parties shall have until April 26, 2002, to serve testimony, and the hearing will be rescheduled for June 5, 2002, at 10:00 a.m.

This proceeding will be more efficient if it is submitted on written testimony and briefs. As a result of discovery, it appears the parties will rely on AT&T and Pacific documents, and that cross-examination will not be necessary. One day of hearing should be sufficient to receive testimony into evidence, address procedural matters, and set a briefing schedule.

IT IS RULED that:

1. Complainant's motion to file amendment to complaint is granted.
2. Pacific Bell Telephone Company's motion to dismiss is denied without prejudice.
3. The schedule for this proceeding is as set forth herein.

Dated February 26, 2002, at San Francisco, California.

/s/ JANICE GRAU

Janice Grau
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to File Amendment to Complaint, Denying Motion to Dismiss, and Amending Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated February 26, 2002, at San Francisco, California.

/s/ JACQUELINE GORZUCH

Jacqueline Gorzoch

N O T I C E

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